

## **Building the New Reclaimed Water WAC Proposed Draft Rule Language - work in progress (WIP) for Rule Advisory Committee Use Only**

### ***Part I – GENERAL INFORMATION - version 1.2 (6-16-2009)***

#### **Intent of Part I**

1. Identify:
  - Authority for the rule.
  - Purpose of the rule.
  - Who is subject to the rule.
2. Summarize the scope of the rule.
3. Define terms used within the rule.
4. Specify roles and responsibilities
  - Departments of ecology and health
  - Lead agency and non-lead agency
  - Reclaimed water generators
  - Reclaimed water distributors
  - Reclaimed water users

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#### **Proposed Sections**

173-219- 010	Authority and purpose.
<del>473-219- 040</del> 173-219- 020	Applicability.
<del>473-219- 040</del> 173-219- 030	Scope.
<del>473-219- 040</del> 173-219- 040	Definitions.
<del>473-219- 040</del> 173-219- 050	Division of responsibilities between the departments of ecology and health.
<del>473-219- 040</del> 173-219- 060	Requirements for a person who generates reclaimed water.
<del>473-219- 040</del> 173-219- 070	Requirements for a person who distributes reclaimed water.
173-219- 080	Requirements for a person who uses reclaimed water.

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#### **WAC 173-219-010 Authority and purpose.**

1. **Authority.** This chapter is adopted under the authority of chapter 90.46 RCW, Reclaimed Water Use.

2. **Purpose.** The purpose of this chapter is to adopt a rule that encourages the development of water reclamation facilities to meet growing water quantity and quality needs of the state. It provides a predictable and efficient regulatory process for the generation, distribution, and use of reclaimed water to protect:

- The health and safety of WA citizens
- The state's water quality for beneficial uses
- Existing water rights from impairment by reclaimed water projects

#### **WAC 173-219-020 Applicability.**

1. These rules apply to all persons planning, designing and operating reclaimed water facilities, including generation, distribution, storage and use as defined in chapter 90.46 RCW and in this chapter. The distribution and use of reclaimed water in compliance with the requirements of this rule and with any permit issued under this rule is not considered a wastewater discharge.

~~1.2.~~ Unless the lead agency determines that the potential for public or environmental exposure from the use requires a reclaimed water permit under this chapter, this rule does not apply to the following types of water reuse:

(a) The capture and redirection of wastewater effluent for treatment plant purposes when under the direct control of the operator in responsible charge of the facility.

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(b) The capture and redirection of used process water back to process uses within the bounds of an industrial facility.

**Comment [KCC1]:** The exemption from permitting reclaimed water used for treatment plant purposes is in Part III. This exempts wastewater effluent reuse at the treatment plant from the entire rule.

~~(b)(c)~~ The reuse of greywater permitted under rules adopted by the department of health.

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(d) The use of agricultural industrial process water permitted under Ch 90.48 RCW.

(e) The use of industrial reuse water permitted under Ch 90.48 RCW.

~~(e)(f)~~ Land treatment facilities permitted under Ch 90.48 RCW.

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~~(e)(g)~~ Wastewater effluent discharges permitted under Ch 90.48 RCW.

~~(e)(h)~~ Onsite sewage disposal systems regulated under Ch. 70.118 and 70.118B RCW.

#### **3. Relationship to other laws.**

(a) In addition to the requirements of this chapter, other laws, regulations, and ordinances may also apply to reclaimed water generation, distribution or use. These include but are not limited to those listed in Appendix 1.

~~(a)(b)~~ The authority and duties created in this chapter are in addition to any authority and duties already provided in law. Nothing in this chapter limits the powers of the state or any political subdivision to exercise such authority.

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4. **Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.
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#### **WAC 173-219-030 Scope**

1. This rule governs all aspects of the use of reclaimed water in Washington state, including the authority to generate and distribute it, and the sanctions for failing to comply with state requirements expressed in statute or rule.
  2. The rule establishes:
    - (a) The lead agency for the state for all authorized categories of reclaimed water use.
    - (b) Requirements for consideration of reclaimed water in planning documents.
    - (c) Submittal requirements and procedures for agency review and approval of reclaimed water facilities.
    - (d) Requirements and procedures for permit issuance, appeal, transfer, modification and revocation. For private utilities, this includes information reasonable and necessary for the lead agency to determine whether the utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.
    - (e) Required permit conditions and compliance monitoring that assure adequate and reliable treatment, and govern the water quality, location, rate, and purpose of use.
    - (f) Requirements for operation and maintenance of the facility.
    - (g) Technical standards for the generation, distribution, storage and use of each category of reclaimed water use authorized under state law
    - (h) Standards and procedures for assessing potential for impairment of existing water rights and plans to compensate or mitigate for any impairment.
    - (i) Fees to recover the costs of administering the program.
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#### **WAC 173-219- 040 Definitions – Alphabetized List**

***Note: Ecology has temporarily placed the list of potential definitions in a separate file solely for convenience in reading this document.***

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### 173-219-050 Division of responsibilities between the departments of ecology and health

*Note: This section needs more work for clarity and seamless coordination between the two regulatory agencies:*

1. Only the department of ecology or the department of health may act as a lead agency for purposes of this chapter.

**Comment [KCC2]:** This is not needed in this section.

2. For any permit, the lead agency shall:

- (a) Receive the permit application and related project submittals.

- ~~(a)~~(b) Review and approve all submittals required for permit issuance.

- ~~(a)~~(c) Coordinate project reviews and permit input with the non-lead agency.

- ~~(a)~~(d) Issue the permit for the reclaimed water facility with permit conditions specifically stating notification requirements and regulatory authority.

- (e) Receive, review, coordinate with non-lead agency, and approve all submittals required by conditions in the permit.

- (f) Conduct compliance inspections and take corrective actions when appropriate.

- ~~(f)~~(g) Report violations of specified permit conditions to the non-lead agency and coordinate on the best method to achieve compliance. Both Ecology and DOH retain their separate regulatory authorities to take corrective action as needed to protect public health or environmental water quality.

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**Comment [KCC3]:** These seems out of place and may fit better elsewhere in this section. Does it need to include water resources?

3. For any reclaimed water project, the non lead agency shall:

- (a) Coordinate with lead agency to assure that state regulations, permits, and compliance requirements will protect both public health and environmental water quality.

- ~~(a)~~(b) Review submittals referred by lead agency.

- ~~(a)~~(c) Assist lead agency with permit appeals, compliance or enforcement actions when needed.

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4. Responsibilities of the department of ecology.

- (a) Except as provided in subsection (5) of this section, the department of ecology is the lead agency and shall coordinate, review, issue, and enforce all reclaimed water permits issued under this chapter.

- (b) Ecology's Water Quality Program shall review reclaimed water requirements for consistency with other state and federal water quality regulations including:

i. Inclusion in general sewerage planning and facility plans.

ii. NPDES and state waste discharge requirements and permits including source control and pretreatment requirements.

iii. Regulation of operators of reclaimed water facilities.

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(c) Ecology's Water Resources Program shall make all regulatory decisions related to potential impairment of existing water rights or for new water rights when mitigated by reclaimed water.

(d) Ecology's Shorelands and Environmental Assistance Program shall? review watershed planning under Ch. 90.82 RCW for inclusion of reclaimed water in planning documents.

#### 5. Responsibilities of the department of health

(a) The department of health shall be the lead agency for facilities and uses limited to the following:

i. On-site, subsurface ground water recharge by vadose zone percolation up to and including 100,000 gallons per day provided that the source of the reclaimed water is domestic wastewater only.

ii. Commercial and industrial uses when a reclaimed water or wastewater discharge permit is not otherwise required by Ecology.

iii. Limited landscape irrigation at or below agronomic rates when confined to a location with reclaimed water uses or wastewater discharges otherwise permitted by DOH.

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(b) Review reclaimed water requirements for consistency with other state and federal public health regulations including:

i. Water supply planning. State law requires consideration of reclaimed water use within water supply plans and encourages implementation where determined feasible by water system policymakers.

ii. Establishing public health protection requirements for industrial, commercial and urban service uses including pipe separation, dual plumbed systems, cross-connection control and backflow prevention.

iii. Protection of potable water systems including the responsibility to identify when and under what conditions a water supply is suitable for potable purposes.

Comment [TG4]: J. Kounts addition.

Comment [KCC5]: Legal Question – is this what the law really says?

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(c) Coordinate with local health departments in order to foster a closer working relationship with local agencies and to reduce any potential conflicts. To the extent authorized, DOH may delegate some or all of its responsibilities for a proposed project to a local health jurisdiction. For any local delegation, DOH will incorporate into the delegation agreement a requirement that the local agency abide by the terms and conditions in the same manner as DOH.

Summary Table of Lead Agency Responsibilities

Category of Use	Ecology Lead	DOH Lead
Multiple types of use	All except ...	If all uses are direct urban uses where DOH would otherwise be the lead.
Surface water augmentation	All	
Wetlands	All	
GW recharge by surface percolation	All	
GW recharge by vadose zone percolation Domestic wastewater source	> 100,000 gpd	< or = 100,000 gpd
Industrial wastewater source	All	
Combined wastewater source	All	
Direct groundwater recharge	All	
Land application		
At or below agronomic rates	All except ----- -	Landscape irrigation confined to a location under DOH permit.
Above agronomic rates	All	
Impoundments	All except ----- -	Landscape irrigation confined to a location under DOH permit.
Commercial and industrial uses such as toilet flushing, cooling water, etc.	When combined with Ecology regulated uses or effluent discharges.	When the only use or combined only with DOH regulated uses or effluent discharges.

**173-219-060 Requirements for a person who generates reclaimed water.**

1. A person may generate reclaimed water for distribution or use only in accordance with applicable requirements of this chapter and any applicable permit issued under this chapter.
2. The generator shall obtain a permit from the lead agency prior to distribution or use of the reclaimed water in accordance with the requirements of Part III of this rule.
3. The generator, as permittee, shall ensure that the applicable requirements of this chapter and the permit issued under this chapter are met.

4. The generator, as permittee, shall maintain control over, and be responsible for, all facilities and activities inherent to the production of reclaimed water to ensure that the reclamation plant operates as approved by the Washington Departments of Health and Ecology.
  - a. The generator, as permittee, shall control industrial and toxic discharges that may affect reclaimed water quality through either a delegated pre-treatment program with Ecology or assuring all applicable discharges have permits issued under chapter 90.48 RCW and 173-220 WAC.
  - ~~a-b.~~ The generator, as permittee, shall have an operator, certified by the state, in responsible charge of the day-to-day operation of the facility generating reclaimed water. The certification procedures are set forth in chapter 173-230 WAC.
5. Where the reclaimed water distribution or use area is not under the direct control of the generator, the generator, as permittee, shall provide the distributor(s) and user(s) with a copy of the permit requirements and ensure through enforceable contracts or ordinances that the applicable requirements in this chapter and any applicable permit issued under this chapter are met.

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Comment [TG6]: Clarify defs. for generator, permittee, distributor.

Comment [TG7]: Public and Private entity information moved to Permits Section 205.

#### **WAC 173-219-070 Requirements for a person who distributes or transports reclaimed water.**

1. A person may only distribute reclaimed water in accordance with applicable requirements of this chapter and any applicable permit issued under this chapter.
2. Any person who distributes reclaimed water is responsible for all facilities and activities inherent to their distribution of the reclaimed water. For the purposes of this section, distribution also includes the use of any storage facilities or transport vehicles.
3. The person who distributes the reclaimed water shall ensure that the construction, operation, maintenance and monitoring system within their distribution system meets all applicable requirements of this chapter and the permit issued to generator of the reclaimed water.
- ~~3.4.~~ If the person distributing or otherwise transporting reclaimed water is not the user, the distributor shall provide the user with a copy of the applicable permit requirements and ensure through enforceable contracts or ordinances that the applicable requirements in this chapter and any applicable permit issued under this chapter are met.

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#### **WAC 173-219-080 Requirements for a person who uses reclaimed water.**

1. A person may only use reclaimed water in accordance with applicable requirements of this chapter and any applicable permit issued under this chapter.

- 1.2. Any person who uses reclaimed water is responsible for all facilities and activities inherent to their use of the reclaimed water. For the purposes of this section, use also includes the use of any on-site storage facilities.
3. The person using the reclaimed water shall ensure that the construction, operation, maintenance and monitoring system at their use area meets all applicable requirements of this chapter and the permit issued to generator of the reclaimed water.

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